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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
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12  
13 LONNIE LEE POSLOF, SR.,

14 Petitioner,

15 v.

16 STU SHERMAN, Warden,

17 Respondent.  
18

Case No. ED CV 15-2526 AG (MRW)

**ORDER SUMMARILY DISMISSING  
HABEAS ACTION**

19 The Court dismisses Petitioner's defective and successive state habeas  
20 action.<sup>1</sup>

21 \* \* \*

22 Petitioner, an inmate at the state prison in Corcoran, filed a motion  
23 requesting a stay of the time period during which he can file a habeas petition in

24 <sup>1</sup> If it "appears from the application that the applicant or person  
25 detained is not entitled" to habeas relief, a court may dismiss a habeas action  
26 without ordering service on the responding party. 28 U.S.C. § 2243; see  
27 also Rule 4 of Rules Governing Section 2254 Cases in United States District  
28 Courts (petition may be summarily dismissed if petitioner plainly not entitled to  
relief); Local Civil Rule 72-3.2 (magistrate judge may submit proposed order for  
summary dismissal to district judge "if it plainly appears from the face of the  
petition [ ] that the petitioner is not entitled to relief").

1 this Court. He does not have an active case on file in this district. Instead, his  
2 filing is apparently an attempt to extend the deadline to file a future habeas petition  
3 challenging his state court criminal conviction.

4 This request is fundamentally flawed in at least two respects, so Petitioner's  
5 action must be dismissed.

6 1. Petitioner has not filed an actual habeas petition with this Court.  
7 According to the motion, Petitioner recently sought habeas relief in the state  
8 supreme court on undefined grounds.<sup>2</sup> Petitioner's submission is not accompanied  
9 by any information regarding his criminal case or the claims of error he wishes to  
10 assert on habeas review.

11 As a result, Petitioner failed to comply with the Rules Governing Section  
12 2254 Cases in the United States District Courts. Rule 2(d) expressly requires that a  
13 state prisoner commence a habeas action by using a standard form prepared by the  
14 Court. In our district, prisoners must complete Form CV-69. That form provides  
15 the Court with basic information about the petitioner, his conviction, the prior  
16 status of his case in state and federal court, and, most importantly, the federal  
17 constitutional claims he wishes to pursue here.

18 A state prisoner must begin his case by filing a petition for a writ of habeas  
19 corpus. Petitioner's request for an extension to file his federal habeas petition – in  
20 the absence of a properly filed petition – is inadequate. If he files an action after  
21 the statutory deadline, Petitioner may be entitled to request equitable tolling of the  
22 limitations period. However, at this stage, the Court cannot extend the habeas  
23 filing period as Petitioner requests.

24 2. The other flaw with Petitioner's filing is also fatal to his claim – he  
25 likely already received federal habeas review for his criminal conviction. The

26 <sup>2</sup> According to the Court's review of the state supreme court's website,  
27 that court denied habeas relief based on the untimeliness of Petitioner's  
28 submission. (*In re Poslof*, No. S227947 (Cal. Nov. 10, 2015) (citing *In re Robbins*,  
18 Cal. 4th 770, 780 (1998), and *In re Clark*, 5 Cal. 4th 750, 767-769 (1993)).)

1 Court takes notice Petitioner's previous case in this Court. (Poslof v. Yates, No.  
2 ED CV 06-1418 AG (SH) (C.D. Cal.).) Based on the Court's review of the  
3 previous action, it understands that Petitioner is currently serving a life sentence  
4 based on a 2003 conviction and sentence for failing to register as a sex offender.  
5 (Docket # 156.) In the previous habeas action, the Court conducted an evidentiary  
6 hearing and issued a decision denying habeas relief on Petitioner's stated claims.  
7 The Ninth Circuit Court of Appeals affirmed this Court's ruling in a reasoned  
8 decision. (Docket # 221.)

9 Under federal law, a state prisoner is generally required to present all  
10 constitutional challenges to a state conviction in a single federal action. A habeas  
11 petition is second or successive – and subject to dismissal under 28 U.S.C.  
12 § 2244(b) – when the petition “raises claims that were or could have been  
13 adjudicated on the merits” in the first action. McNabb v. Yates, 576 F.3d 1028,  
14 1029 (9th Cir. 2009). A prisoner must obtain authorization from the Court of  
15 Appeals to pursue such a successive habeas petition before the new petition may be  
16 filed in district court. 28 U.S.C. § 2244(b)(3); Burton v. Stewart, 549 U.S. 147  
17 (2007) (dismissing successive petition for failure to obtain authorization from court  
18 of appeals).

19 To the extent that Petitioner's current motion relates to habeas claims  
20 involving his 2003 conviction (which is highly likely given his extended period of  
21 incarceration), his submission is not accompanied by a certificate from the Court of  
22 Appeals authorizing a successive habeas action pursuant to 28 U.S.C. § 2244(b).  
23 On this basis, the current petition is subject to summary dismissal.<sup>3</sup> See 28 U.S.C.  
24 § 2244(b); Burton, 549 U.S. 147; McNabb, 576 F.3d at 1029.

25 \* \* \*

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27 <sup>3</sup> The Court declines to transfer the action to the Ninth Circuit, as there  
28 is no basis to conclude that Petitioner “mistakenly submitted” this motion to the  
district court instead of the appellate court. Ninth Circuit Rule 22-3(a).

1 The action should be summarily dismissed without service on the California  
2 Attorney General: (a) for Petitioner's failure to file a petition to commence the  
3 case; and (b) as successive under 28 U.S.C. § 2244. The petition is therefore  
DISMISSED.

4 IT IS SO ORDERED.



7 Dated: December 31, 2015

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8 HON. ANDREW J. GUILFORD  
UNITED STATES DISTRICT JUDGE

9 Presented by:



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13 HON. MICHAEL R. WILNER  
14 UNITED STATES MAGISTRATE JUDGE